IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.6259 OF 2005
IN
FIRST APPEAL NO.2566 OF 2005

Oriental Insurance Co.Ltd. ...Applicant

vs.

Chandrabai N.Kamble & Ors. ...Respondents

Mr.N.M.Godbole for the Applicant
Mr.J.J.Mendon for the Respondent Nos.1 to 6.

CORAM: A.S.OKA, J.
DATED: APRIL 20, 2006.

P.C.:

1. Rule. Advocate for the Respondent Nos.1 to 6 waives service. The Applicant has preferred this Appeal for challenging the Judgment and Award passed by the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988. The Award is in the sum of 3,33,000/-. The claim for compensation arises out of a fatal accident.

2. By filing the additional written statement, the Insurance company submitted that there is a breach of the terms and conditions of the policy on the part of the insured i.e. the owner of the offending vehicle as he had allowed the deceased to travel in a goods vehicle as a passenger.

3. The Applicant-Insurance Company has admittedly not led

any evidence. Reliance is placed by the Advocate for the Applicant on statement of one Makhare which is allegedly recorded by the police in investigation. The Advocate for the Applicant submitted that certified copy of the said statement was produced on record and the said statement discloses that the deceased was travelling as a passenger in a goods vehicle. It must be noted here that no attempt has been made by the Applicant to issue witness summons to the said person. It is true that the strict rules of evidence are not applicable to the proceedings before the Motor Accident claims Tribunal. What was produced before the tribunal was the statement of Shri Makhare which was obviously not signed by him. The learned Single Judge of this court has observed in a decision reported in 1993 ACJ page 1048 (Maharashtra State Road Transport Corporation Vs.Maggar Ghai Dhillon) that though the strict rules of evidence are not applicable, that does not mean that the basic rules of evidence are not applicable or are not required to be followed by the Tribunal.

4. Even assuming that the said witness Makhare was not available, the Appellant-Insurance Company could have examined the Police constable who had recorded the said statement. The law is very clear that the entire burden of proving that there was a breach of conditions of policy was on the Insurance company. The Applicant-Insurance Company

has not led any evidence. Prima facie it appears to me that the burden is not discharged by the Applicant and that is the reason why the Tribunal has made Award against the Applicant. As of today, there is no Appeal preferred by the insured. Even if the Applicant-Insurance Company succeeds in the Appeal, the Award will remain against the insured. Therefore, even if the amount payable under the Award is paid to the claimants, the Insurance Company can always recover the said amount by taking out appropriate proceedings against the insured. Shri Godbole for the Applicant submitted that the security be ordered to be furnished by the original claimants. In the facts of the present case the said request cannot be considered as the Applicant-Insurance Company has not made any attempt to lead any evidence to establish the breach of policy conditions. Hence, prayer for stay cannot be granted.

5. Hence I pass the following order :

i) The Application for stay is rejected. However, it is made clear that in case the Applicant succeeds in the Appeal, the amount of compensation which may be paid by the Applicant can always be recovered form the insured. It is also made clear that the deposit of the amount of compensation by the Applicant and the withdrawal of the same by the original claimants will be subject to the final outcome of the Appeal.

Judge.